

DECISIONS OF THE SUDDER DEWANNY ADAWLUT,
RECORDED IN ENGLISH, IN CONFORMITY TO
ACT XII OF 1843.

VOLUME IV (1848).

The 3d January, 1848.

PRESENT: R. H. RATTRAY AND A. DICK, ESQRS., Judges,
AND W. B. JACKSON, ESQ., Temporary Judge.

CASE NO. 253 OF 1846.

*Regular Appeal from a decree passed by the Principal Sudder Ameen
of Shahabad, Munowur Ali Khan, July 4th, 1846.*

KULLUNDUR ALI KHAN, Appellant (Defendant) v. MUSST.
KUNGUL BIBI, Respondent (Plaintiff).

[Additional evidence in appeal—Neglect to adduce in court below—Claim for part only of inheritance, if maintainable.]

A party cannot be permitted to adduce additional evidence in appeal where it was due to his neglect that he failed to adduce it in the court below.

A claim by a Mahomedan mother for a sixth of the dower (*den-muhr*) due to her deceased daughter who was the wife of the defendant, was decreed, she having abandoned all future judicial claim to any other portion of her daughter's estate, in order to remove any doubt the court might entertain on the question whether she could sue for only one of the properties she might claim as an heir of her daughter.]

Wukeels of Appellant—Ameer Ali and Abas Ali.

Wukeel of Respondent—J. G. Waller.

THIS suit was instituted by respondent, on the 29th December 1845, to recover from appellant the sum of Company's rupees 7,114-10-9, the same being one-sixth of the *den-muhr* (or marriage dower) of her daughter, Munwur Bibi, the deceased wife of appellant.

The decree of the lower court is as follows:—'The claim in this case is for a sixth of Company's rupees 42,688: the remainder being the right of other heirs. The *den-muhr* is acknowledged by defendant (appellant); but he pleads the abandonment, or restoration by gift, of it on the part of his wife. There is no proof of this; and the witnesses have not established the fact. From the date of the decease of Munwur Bibi, 27th *Sawun* 1257 *Hijree* (13th October 1841) to the date of institution of the suit, there has not elapsed 12 years. Upon these grounds, a decree is passed in favour of the plaintiff.'

[2] It was urged in appeal, that respondent had declared her intention of bringing another action for her portion of the rest of her daughter's estate; and that, consequently, under the Court's Circular of the 11th January 1839, the case could not be heard.

The plea was submitted to the court collectively; and another circular, to have effect prospectively, was issued on the 30th September last: but the old rule still remained applicable to the present case; and, to remove

any doubt the court might entertain on the still open question, respondent abandoned all future judicial claim to what might remain due to her of her daughter's estate, and the case was heard in due course.

We observe, that the deed of marriage settlement, under which the claim is brought, is admitted by appellant; and that he (appellant) now wishes to produce certain evidence with a view to exonerate himself, which he did not furnish after receiving due notice from the lower court, within the period prescribed by law. No sufficient reason being assigned for this neglect, the court will not now receive it: and, for the same reason, we reject the application of Gholam Nubbee, a third party, who wishes to file a petition, coming forward as purchaser of the property under litigation, at a sale held in satisfaction of a decree of court.

We affirm the decree of the principal sudder ameen, with costs chargeable to appellant.

The 4th January, 1848.

PRESENT: J. A. F. HAWKINS, ESQ., *Temporary Judge.*

PETITION NO. 237 OF 1846.

[Judgment in appeal—Failure to record reasons—Summary reversal of judgment of court of first instance—Irregularity.]

Where the principal sudder ameen had summarily reversed the decree of the court of first instance, without duly considering all the facts and circumstances noticed in the first court's judgment and without recording the reasons, *held* that the judgment was incomplete and the case remanded for reconsideration and fresh disposal.]

IN THE MATTER OF THE PETITION OF POOTHEE KHAN AND OTHERS, filed in this court on the 18th May 1846, praying for the admission of a special appeal from the decision of Mr. C. Mackay, principal sudder ameen of Mymensingh, under date the 17th February 1846; reversing that of the moonsiff of Nitrokona, under date 4th August 1845, in the case of Poothee Khan and others, plaintiffs, *versus* Ali Newaz Khan and others, defendants.

It is hereby certified that the said application is granted on the following grounds:—

The defendants in this case had summarily sued the petitioners for arrears of rent before the collector, and obtained a decree, which the present action was brought to set aside.

The moonsiff, advertent to the fact that the *kubooleut*, on which the summary action had been brought, had not been filed before the collector; and being of opinion, for reasons fully stated by him, that the *kubooleut* could not be depended upon as a genuine document, gave judgment for the petitioners, reversing the summary decree.

[3] The principal sudder ameen meets the opinion of the moonsiff on this point very summarily, by recording his judgment, that, as the *kubooleut* was proved by the witnesses brought in support of it, the petitioners were not entitled to a decree; and reverses the moonsiff's decision.

This summary mode of dealing with a judgment will not do. The principal sudder ameen is bound to record his reasons for thus admitting evidence, which, for reasons fully given, is rejected by the lower court, and *vice versa*. Considering the judgment of the principal sudder ameen to be incomplete in this respect, I admit the appeal, and remand the case for decision *de novo*; directing the principal sudder ameen to record his reasons at length, for the decision at which he may arrive.